

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK X

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★ JUN 29 2020 ★
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JERMAINE MAKELL

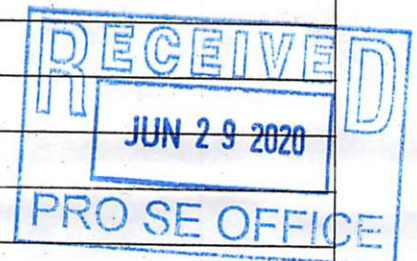
Plaintiff

AMENDED
COMPLAINT

- against -

STATE OF NEW YORK, C.O. SAILOR, (BMC)(JO)
JOHN & JANE DOE'S IN THE
MEDICAL Dept. of NASSAU Co.,
C.O. GOLDEN, SHERIFF FLUDD,
etc...

Defendants



I Jermaine Makell (Plaintiff)
being duly Sworn, deposes and State that
I am now responding to the District
Judge Cogan, and am now responding to The
best of My ability to Memorandum Decision
and order hopefully within a timely fashion?
And Needless to say I'm a Layman.

Background

I Plaintiff Pro Se, was a prisoner
in the Nassau County Correctional Center,
when I had been assaulted by two (2) C.O.'s
as a result of them breaking up a fight.
I was originally Laying down in My bed,
when two (2) other inmates began to
fist fight each other. Upon realizing what
was happening, I stood on my bed after
waking up and, while placing my back against
the wall of my cell, I told both of
the fighting inmates to move away from
my cell. At this time two (2) on-
duty Cor. Officers, C.O. Sailor and
C.O. Golden arrived on the scene to

break up the fight. Upon reaching the fight, C.O. Sailor began to scream "stop fighting, stop fighting" in a loud manner.

After no response by either inmate, the Officer Sailor immediately pulled out a can of some form of mace and sprayed the Spanish (Latino) prisoner in the face. Even though both prisoners still continued to fight and grab or hold on to each other, both C.O. officers could very clearly see and assess the situation realizing with ease that I (within my cell) had completely nothing to do with it at all, in any fashion whatsoever. Plus, I'm several feet away, while on top of my bed, with my hands in the air! Needless to say, the C.O. Sailor takes it upon himself to recklessly and maliciously spray ~~me~~ ~~me~~ in the face as well for no reason at all. Perhaps, it was to prevent me from seeing or observing what else will take place with the discipline enforced upon these two (2) prisoners fighting? I don't want to speculate here, but it was clearly no reason to assault me with a can of mace while I'm nowhere involved, nor was I any type of threat to those two officers for that situation. Plus, when the C.O. Sailor looked in my eyes, direction to spray me next (while my hands were in the air, and standing on my bed), I verbally stated to him "I have nothing to do with this"; But to no avail, he sprayed me anyway. Again your Honor, I stated several times that "I have nothing to do with it"!

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As a result of me being sprayed in the face with a chemical agent by A C.O. Officer, I will now continue and attempt to explain a Show Cause with more "facts as I know it." This should help show "how and why" I believe that all Parties mentioned herein should be held accountable to the fullest extent!

Also, within this timely response, I would like to make it very clear why all the other Parties (I did name), in my original Complaint claim should not be dismissed, but honored. Since this is an amended Complaint, I have also included the "State of New York" as a Party that's liable too. Only based upon the fact that you (Judge) stated within the Conclusion Part of your "Memorandum Decision and Order", on page # 5, that "This amended Complaint will completely replace Plaintiff's Original Complaint". With that being said, I will now continue, with my response.

For instance, The C.O. Golden, while "acting under the Color of State Law", should be also held liable for my current condition, due to his malicious conduct, which has/did deprive me [The Plaintiff] of my Constitutional rights to be protected and secured. Nassau County Correction Center is liable for my care, custody, and control, which may be corrected by the Eighth and/or Fourteenth Amendments? I must admit that this type of behavior maliciously against me from these two (2) C.O. Officers has mentally dismantled any/all trust for or of officers of the Law system. Yes, I now have continuous panic attacks, physiological damage, sleeping disorder every night, communication damage, etc...

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Again, this Particular officer Golden's failure to step in and help Physically Stop or even his failure to verbally Attempt to instruct his fellow Partner from spraying (Me), an innocent Prisoner (Man) in this incident; Not only once was I sprayed, but I was sprayed, a second time for no reason at all. Therefore, he is also liable for my condition through his silenced type of behavior, which shows his sanction of his Partners actions.

Nevertheless, C.O. Golden Never checked to see (on his own accord) if I was Physically alright within my cell, even after he witnessed me falling off my bed. Yes, he observed my fall, which cause me to fracture my tooth, hit my head ~~with~~ and face on the sink, causing injuries to my back, neck, legs, hand, bust my bottom lip, etc.

Your Honor, at this time of my injuries, I was left within my cell with extreme amounts of pain in my left side of my face, as well as the other parts of my body I mentioned above. With this being said, I feel a need to mention that both officers made sure to lock me in my cell A.S.A.P., which I remained in for approximately 30 to 45 minutes or more. Mind you, I have Asthma which is a very serious condition to be left by myself (within a locked cell), for such a long duration of time! Also, I didn't even have an Asthma Pump available whatsoever, all the while this Mace (chemical agent) was severely still deeply burning within my lungs. I felt as if I would die because I couldn't quite breathe well at all and began to panic somewhat. Mace was irritating my face, eyes, nose, and burning my back, neck, arms, legs, etc...

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IN any event, it took me an additional 2 more month to finally find out from the Medical Staff (after placing 2 grievances), that my Left cheek bone was actually fractured as well as my tooth was also fractured! This is no type of condition to be leaving an inmate, especially after being Mace (for no incident or reason), in his cell for such a long period of time! This treatment was absolutely absurd to go through, especially just waking up from a deep sleep. Lastly, neither of these Correctional officers aided me within a timely fashion, in which I could have died due to my condition of Asthma. This is complete negligence on both of their behalf.

Now as to "the Medical Staff" members, whom were responsible to make sure that I was in good enough of a condition to return to my cell, but apparently I was not; Especially while I had a fractured tooth, and another fracture on the left side of my face!

Therefore, your honor, this is why I know and believe that the John and Jane Doe's of the Medical Department in which dealt with me on each and every trip (visit) I made to their clinic are in fact also held responsible, especially for not getting me to an ex-Ray A.S.A.P. Yes, even if it was needed or necessary to even take me on an outside trip to a Neat by Hospital would have been more appropriate or more professional. So yes, Nassau County Medical Staff (which is/are unknown to me by names at this current time), was also liable for some type of malpractice, right? Right! They were negligent in the care, custody, and control. I had to continuously complain day and night

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and
 Verbally, by Sick Call Sheets to get me back to the Clinic, as well as by the grievance Procedures there within that facility. I asked and requested stronger Pain Meds, to be sent for X Rays, and Dental, but to ~~No Avail!~~ Finally, after 2 months of waiting I was told that, Yeah (yes), you do have a fractured cheek bone on the left side of your face, and you have a fractured tooth. This type of medical treatment is/was very unacceptable by far. Not to also mention that on several occasions I did in fact request to see or go to the eye doctor, due to my continuous blurred vision trying to move around within that ~~facility~~ facility, let alone trying to head any type of Paper work. I finally was able to see an eye ~~doc~~ doctor twice, and my vision felt quite bad by then! Yes, The doctors stated that I do have eye damage!

Your Honor, I'm quite sure that upon some type of inspection of my Medical records within that facility, that the names of any Nurses ~~or~~ and/or Doctors that dealt with me directly will in fact show their signature on some type of documents? Yes, the ~~the~~ Medical log books for the days that I was attended to? Each one of Those John or Jane Doe's under Minde'd my sincere Painful Complaints for attention for up to 2 (two) months! It was quite unbearable to deal with. I felt that my Medical issues were not addressed properly at all, not in a timely fashion, your Honor! Help me.

Therefore, I was fully deprived of my Constitutional rights under 42 U.S.C. § 1983. Just deferring me to later dates over

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and over was inadequate, and my Medical Condition Continued to get even worse! This behavior on their part was actually sufficiently harmful to my very serious Condition. Yes, all of the Omissions and Non-help is evidence and Shows a deliberate indifference to my very serious Medical Needs; which is/was to me Life Threatening and damaging!

Estelle v. Gamble, 429 U.S. 97, 106 (1976) (establishing the Standard applicable to treatment of Convicted Prisoner under the Eighth Amendment); See Wright v. O'Kist, 101 F.3d 845, 856 (2d Cir. 1996) (applying the same Standard to Pretrial detainees under the Fourteenth Amendment).

Needless to say, those John and Jane Doe's of the Medical staff that dealt with me directly (Government - Officials) did Violate the Constitution. Iqbal 556 U.S. at 676.

Now for Sheriff Vera Fludd, and my reasons why she should and Must be also include within my Complaint and Not dismissed. First of all, after several grievances on every Level (Medical, eye doctor, Just being unlawfully sprayed, etc.); No one from her under staff ever came to question me in regards of my Physical Conditions, nor for my Mental Compassity whatsoever. You know, I'm not at this time quite sure if she was acting "under color of State Law" in this regard, merely because these People or workers are within her facility? If so, then I would like to believe she would be held responsible or liable in some degree for their actions or lack of actions?

For instance, I don't believe that the officers were ever investigated, Repre-

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- Mandated, Docked Pay, fined, or anything as some form of Punishment for their UN-excuseable behavior that's detrimental the life and well being of The Prisoners!!! Needless to say, I don't believe that there is anything on file or their Personal Facility file? Please Sapina and all Records including and not limited to Mental Health, and grievances that may have been written against the two C.O.'s (Golden & Sailor); Prior to My own Incident; especially any Uses of Force From or by them.

Once again, She (Ms. Fludd) after my several grievances of this serious situation; never had these officers Removed or Suspended from the Jail. As a Matter of Fact, I fearfully saw each of these Corr. officers on a daily bases within my dorm area. They continued to work their own daily Schedules as if they had not assaulted me with a deadly weapon. Mace to me, (with asthma) is a harmful and dangerous weapon. As a Matter of fact Your Honor, according to the CPL, I do believe that 120.10 Assault in the first degree is ... A Person is guilty of assault in the first degree when 1, 2, or #3 which is ...

Under Circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of Death to another Person and thereby Causes serious Physical injury to another Person.

Your Honor, with that being said, I Personally feel that these officers should have been legally Charge for that assault on me for no reason, especially when they could clearly^{see} that I was not involved in the initial fight in the first Place. As a Matter of Fact, I would also Sapina Both of the fighters to Prove My Case w/ease.

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Your Honor, within this Amended Complaint, and All the information and reasons I placed above, and for the following reasons below, I am seeking \$ 2,000,000 (Two Million Dollars) in damages.

From the time of immediate Pain and irritation resulting from being sprayed in the Face and eyes, Fracturing my tooth, falling off my bed; as well as I still continue to suffer from head trauma, Memory Loss and Problems, Vision Problems, Panic attacks, and anxiety; I still have great fears and serious distrust for Correctional officers (or Police), etc...

I am asserting Eighth and Fourteenth Amendment Causes of action against State Of New York, C.O. Sailer, John S. Jane Doe's IN The Medical Dept. of Nassau Co., C.O. Golden, Shettiff Fludd, etc...

Penman Mark



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